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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE RICHARD AND SHEILA J. McKNIGHT 2000 FAMILY TRUST, Richard McKnight, Trustee Plaintiff v. WILLIAM J. BARKETT, an individual, CASTAIC III PARTNERS, LLC a California limited liability company Defendants AND RELATED INTERVENOR ACTIONS, THIRD PARTY ACTIONS AND COUNTERCLAIMS	Case No. 2:10-cv-01617-RCJ MOTION TO CERTIFY JUDGMENT AS FINAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 54(b)

The Motion of Third Party Defendants and Counterclaimants and Fourth Party Plaintiffs DACA-Castaic, LLC and Debt Acquisition Company of America V, LLC (collectively, "DACA") respectfully represents:

1. This action was originally a lawsuit on a promissory note (executed by Castaic Partners III, LLC) and on a related guaranty executed by William J. Barkett. The case was commenced on behalf of one plaintiff (the Richard and Sheila J. McKnight Family Trust). A large number of Direct Lenders later sought and obtained leave to file a complaint in intervention relating to the Castaic III obligation and two other similar loans, naming as defendants the borrowers (Castaic Partners, LLC, Castaic Partners II, LLC and Castaic Partners III, LLC) and Mr. Barkett (collectively the "Barkett Parties"). The Direct Lenders' complaint in intervention sought, among other things, a money judgment against Mr. Barkett on his guarantees of each loan.

2. DACA was impleaded into the case when the Barkett Parties named DACA as a third party defendant. DACA counterclaimed against the Barkett Parties. DACA was later granted leave to file a supplemental counterclaim and a fourth party complaint naming certain additional Barkett affiliates as fourth party defendants. Pursuant to Court order, DACA filed a consolidated pleading on March 25, 2013 as ECF No. 231. DACA's pleadings seek only declaratory relief.

3. After granting DACA's motion for summary judgment by Order entered January 5, 2015 (ECF No. 352), this Court entered its Judgment on January 29, 2015 (ECF No. 355)(the "DACA Judgment"). The DACA Judgment disposes of all claims for relief by and against DACA in this action.

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4. The Direct Lenders' complaint in intervention has not yet been litigated. In minutes filed on April 29, 2015 (ECF No 365) the Court scheduled a further status conference to take place on July 24, and made reference to the preparation of a "Proposed Discovery Plan / Scheduling Order." No motion for summary judgment has been filed on either side.

5. As confirmed by the DACA Judgment, DACA has completed valid foreclosures of two of the three trust deeds involved in this case, which secured what are referred to as the Tapia Ranch Note and Castaic II Note. DACA-Castaic has elected not to proceed with the foreclosure of the Castaic III Trust Deed.

6. The Purchase Agreement referred to in the DACA Judgment, under which DACA became the assignee of record of the Castaic Notes and Trust Deeds, excluded by its terms the Guaranties. All claims under the Guaranties were intended to remain with the Direct Lenders. In accordance with this intent, DACA did not sue on the Guaranties. The claims for relief raised in DACA's pleadings were only for declaratory relief, to facilitate the foreclosure of the trust deeds. The Direct Lenders did sue on the Guaranties via their complaint in intervention.

7. Notwithstanding DACA's position that the provisions of the Purchase Agreement excluding the Guaranties are valid, paragraph 1.19 of the DACA Judgment incorporates this Court's ruling to the contrary, stating:

> The assignment of the Castaic Notes and Trust Deeds necessarily included, by operation of law, and assignment of rights under any guarantees of the obligations under those Notes. Accordingly, DACA is the real party in interest with respect to any claims based on those guarantees.

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8. Because the foreclosure sales have now been completed, and the six month post-foreclosure limitations period provided by NRS § 40.455 has expired, there is no claim against the borrowers for a post-foreclosure deficiency under the Tapia Ranch Note or Castaic II Note. Accordingly, the only obligation remaining on those loans is the disputed obligation of Mr. Barkett under the Guaranties.

9. To the extent that, pursuant to the DACA Judgment, DACA-Castaic is the real party in interest as to Guaranty claims currently being prosecuted on behalf of the Direct Lenders, DACA hereby ratifies the continued prosecution of those claims in the name of the Direct Lenders pursuant to Federal Rule of Civil Procedure 17(a)(3).

10. The claims of the Direct Lenders under the Guaranties, and under the Castaic III Note, Trust Deed and Guaranty, are now legally separate and distinct from the rights of DACA relating to the foreclosures, which rights are spelled out by way of the declaratory relief provided by the DACA Judgment.

11. There is no just cause for delay and the DACA Judgment should be certified as final under Federal Rule of Civil Procedures 54(b), for the reasons that:

11.1 The DACA Judgment completely removes DACA as a party to the remaining litigation.

11.2 The claims by and against DACA essentially all relate to DACA's foreclosure of the Tapia Ranch and Castaic II Trust Deeds. The validity of that foreclosure cannot be affected by the monetary claims by and against the Direct Lenders.

11.3 Continued delay in obtaining a final resolution of the validity of DACA's foreclosure is prejudicial to the Direct Lenders.

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WHEREFORE DACA prays for relief as follows:

12. For an order certifying that the DACA Judgment, entered January 29, 2015 as ECF No. 355, be certified as final for purposes of appeal pursuant to Federal Rule of Civil Procedure 54(b).

13. That the order include an express finding that there is "no just reason for delay" as required by Rule 54(b). See, *Nat'l Ass'n of Home Builders v. Norton*, 325 F.3d 1165, 1167 (9th Cir. 2003).

DATE: July 13, 2015 KIRBY & McGUINN, A P.C.

By: /s/ Dean T. Kirby, Jr.
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